

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1012 of 1996
in
SPECIAL CIVIL APPLICATION No. 5059 of 1985

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN
and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

BHASKARRAY C BUTTE

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Appellant

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 30/04/98

ORAL JUDGEMENT {Per : K. Sreedharan, CJ.}

Petitioner in Special Civil Application No. 5059 of 1985 is Appellant. He challenged the appointment of 5th respondent as Secretary to the Panchayat. Petitioner

was Head Clerk of the Panchayat. According to him, he ought to have been preferred to 5th respondent for filling up the post of Secretary. Learned Single Judge declined jurisdiction since petitioner and 5th respondent retired from service. The said view taken by the learned Judge is under challenge.

2. Learned counsel representing the appellant pressed for declaration that the appellant was to be appointed as Secretary of the Panchayat. If such a declaration is given, according to learned counsel, appellant will get a hike in the pensionary benefits. This argument, we are afraid, cannot be accepted. Even if we come to the conclusion that appointment of the 5th respondent as Secretary was not proper, we will not be justified in exercise of power under Article 226 to proceed further and declare the appellant to have been appointed as Secretary. In these circumstances, no relief can be given to the appellant. Such being the legal position, we are constrained to dismiss the appeal. Appeal is dismissed.

{K. Sreedharan, CJ}

{A.R Dave, J.}

Prakash*